IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9229 OF 2004

Ramdas Shankar Nighot .. Petitioner

V/s

Dnyandeep Adivasi Seva Mandal Phulawade and others .. Respondents

Mr.U.B. Nighot for the Petitioner.

Mr.Kiran Bapat for Respondent No.1.

Mrs. M. Thakur, A.G.P. for Respondents Nos.2 to 4.

Mrs.Jyoti Chandrashekar Ranwatkar, Tribal Development Officer, present in Court.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 9TH AUGUST 2005

ORAL ORDER : (Per H.L. Gokhale, J.)

1. Rule. Rule is made returnable forthwith.

2. Heard the learned counsel for the parties.

3. The Petitioner herein claims to have been working in the Tribal School run by Respondent No.1 institution at Village Phulwade, Taluka Ambegaon, District Pune. The Petitioner has the qualification of

B.A., B.Ed. though he does not have the Diploma in Education which is the requirement for a primary school and which is run by the Respondent No.1 institution wherein the Petitioner claims to have been working.

4. The case of the Petitioner is that he worked in this school during the academic year 1996-97 from 12th June 1996 onwards and continuously worked therein during the period when no grants were being received by the school. It is his further case that during this period though he worked in the school, in fact he was not paid any salary. He has annexed the appointment orders during this period to his petition.

5. It is the further case of the Petitioner that he was not allowed to work from 6th July 1999. He therefore filed an appeal bearing No.59 of 1999 under the Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977. That appeal came to be allowed by the decision of the School Tribunal dated 21st November 2001. However, in view of the view taken by the High Court that an Ashram Shala or a Tribal School is not a private school, when a writ petition was filed by the 1st Respondent Management, minutes were signed by the parties therein. These minutes and the order in terms thereof passed on 20th February 2004 in

Writ Petition No.8694 of 2004 recorded that the Petitioner was to be reinstated with effect from 1st March 2004. The Petitioner was permitted to file an appeal to the Competent Authority concerning the Tribal Schools, i.e. Additional Commissioner for Tribal Development of the concerned area.

6. It is the further case of the Petitioner that he accordingly joined in the school and worked from 1st March 2004 until the decision of the Additional Tribal Commissioner in his appeal which was rendered on 5th October 2004. It is his further case that although he worked during this period from March to October 2004, he was not paid any salary. The Additional Tribal Commissioner has taken a view that the Petitioner did not join when he was issued an appointment order on 26th May 1998 and, therefore, the School Management did not seek approval for his post and that is how there was nothing wrong in his termination. The appeal filed by him was therefore dismissed by the order dated 5th October 2004 which is under challenge in the present petition.

7. When the petition came up before another Division Bench earlier on 3rd December 2004, notice was issued to the Respondents stating that the petition will

be disposed of at the admission stage itself. The Respondent School Management as well as the Assistant Project Officer, Integrated Tribal Development Project of the concerned area have filed their affidavits in reply. Affidavit in rejoinder has also been filed by the Petitioner.

8. As stated above, the case of the Petitioner has been that he was working from June 1996 onwards at the time when the school was not receiving any grant. Inasmuch as he has taken the Bachelor's Degree in Education, obviously his intention is to make a career in the field of education. It is his case that therefore there was no question of his not joining on duty on receiving any appointment order in May 1998 as held by the Additional Tribal Commissioner.

9. Mr.Nighot, learned counsel for the Petitioner, drew our attention to the reply filed by the 1st Respondent before the School Tribunal on 3rd September 1999 wherein in para 3 the School Management clearly accepted that the appointment of the Petitioner was in any case made during the period 12th June 1998 to 30th April 1999 although on temporary basis as claimed by them. It is also material to note that in a further affidavit filed by Shri Namdev Maruti Nandakar, Chairman

of the 1st Respondent, on 7th February 2005 in the present proceeding, he has accepted in para 4 thereof that the Petitioner did work, although on temporary basis, from 1st January 1998 to 30th April 1998 also. This is a period prior to the one for which the admission was made in the earlier referred reply dated 3rd September 1999. If these are the affidavits of the Chairman of the 1st Respondent, one fails to see as to how the Additional Tribal Commissioner has come to a conclusion that the Petitioner did not join when he was appointed on 26th May 1998. In fact, in the earlier referred para 3 of the affidavit dated 3rd September 1999, the 1st Respondent has stated that the appointment of the Petitioner was for a temporary period for the period from 12th June 1998 to 30th April 1999. It is then contended in that affidavit that inasmuch as there was no question of taking him back in service thereafter, there was no occasion to issue an order not to allow him to join on duty on 6th July 1999. This stand taken by the 1st Respondent clearly belies what they tried to contend before the Additional Tribal Commissioner and which has found favour with the Additional Tribal Commissioner.

10. The conclusion by the Additional Commissioner that the Petitioner did not join from June 1998 does not

stand to reason when the school started receiving grants from the year 1998-99. Surely, a person who worked during the earlier period, i.e. from 1st January 1998 to 30th April 1998 (as per the admission of the School Management), without receiving any salary as claimed by him will definitely accept the employment when offered in June 1998 when the school had started receiving grants. Thus, the contention of the Petitioner appears to be correct that the School Management did not forward his name for approval in June 1998 and the said action is obviously erroneous and so also the order passed by the Additional Tribal Commissioner confirming it on 5th October 2004.

11. The Additional Tribal Commissioner has drawn some adverse inference against the Petitioner in view of some other record which was sought to be relied upon by both the parties. The Petitioner tried to show the record of his presence in the school whereas the School Management tried to dispute by submitting that the signatures on those documents, though similar, were not proved. We fail to understand as to how the Additional Tribal Commissioner accepted the submission based on mere production of some such record and the alleged admission of the signatories when no evidence is referred in support thereof. This aspect appears to

have weighed on the mind of the Additional Tribal Commissioner, but keeping it aside, the fact remains that he has passed the impugned order essentially because the Petitioner, according to him, did not join when he was offered the employment in June 1998. As stated above, it does not stand to reason. The 1st Respondent has tried to rely on the certificate of Gramsevak of the village to contend that the Petitioner worked as clerk during the relevant period under him. Mr.Nighot countered it by relying upon the certificate of the Sarpanch and by contending that in any case it was part-time work. This submission of the 1st Respondent cannot be accepted against his own admissions on affidavits as pointed out earlier. On the other hand, the Petitioner has filed affidavits of two former teachers where he has alleged certain malpractices engaged into by the Chairman of the 1st Respondent institution. We are keeping aside both these sets of allegations and counter-allegations inasmuch as though they can throw some light on the character of the persons concerned, as far as the main dispute is concerned, there is sufficient material to draw an inference that the Petitioner would not have declined to join duty when offered employment and that he was working earlier. The inference drawn by the Additional Commissioner does not stand to reason. It is contrary

to record and therefore perverse. We, therefore, set aside the order passed by the Additional Tribal Commissioner and direct the Respondents to see to it that the Petitioner is allowed to join on duty in the school run by Respondents Nos.1 and 2 forthwith.

12. As stated earlier, the Petitioner does not have the D.Ed. qualification. He will have to take the postal course for that and we direct the Respondents Nos.1 and 2 to forward his application to the concerned authorities for that purpose. The Petitioner should clear the D.Ed. examination at the earliest after completing the course while serving in the school run by the Respondents Nos.1 and 2.

13. Inasmuch as the Petitioner is directed to be reinstated, the question of back wages arises. It is an admitted position that the Petitioner was allowed to work in terms of the order passed by this High Court on 20th July 2004. He did work until October 2004 when the Additional Tribal Commissioner passed the impugned order. It is the case of the Petitioner that he had not been paid salary for this period. We direct the Respondents Nos.1 and 2 to pay salary to the Petitioner for this period as per the Government’s scale from the grants received by the School Management. As far as the

other period of unemployment is concerned, it is quite likely that some other teacher must have worked in the place of the Petitioner. We do not want the Government to incur double expenditure. This being the position, it will be desirable that the Additional Commissioner (Tribal Development) makes an enquiry for the period during which the Petitioner was unemployed, excluding the above referred period, and to come to a conclusion as to whether the Petitioner is entitled to any payment during that period and if so, how much. This also depends upon as to whether the Petitioner was gainfully employed during this period, for which parties will have to produce evidence.

14. Since we have directed the reinstatement of the Petitioner, if possible he should be accommodated on a vacant post, if that is available in the school but if not, by replacing him in the place of the juniormost teacher in that school.

15. Rule is made absolute as above.

16. The Respondents will permit the Petitioner to join the 1st Respondent School on producing an authenticated copy of this order.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)